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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 26, 1993

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FCC MAIL ROOM

Office of the Secretary
of Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 92-266
Uniform Cable Television Rates

Gentlemen:

Enclosed please find the original and nine copies of the City of Manitowoc, Wisconsin's Comments in the above matter. Pursuant to your guidelines for uniform filings, the original is not stapled.

I am also enclosing an extra copy of this cover letter. I would ask that you acknowledge receipt of the enclosures on the extra copy of this cover letter and return it to me in the enclosed, self-addressed stamped envelope.

If there are any questions, please do not hesitate to call me at 414-683-4419.

Very truly yours,

Patrick L. Willis

Patrick L. Willis
City Attorney

PLW:es

Enc.

Patrick L. Willis
City Attorney

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)

MM Docket No. 92-266

Rate Regulation)
(Uniform Rate Requirement))

To the Commission:

**THE COMMENTS OF THE CITY OF MANITOWOC, WISCONSIN
IN SUPPORT OF UNIFORM RATE STRUCTURE THROUGHOUT
AREAS SERVED BY CABLE SYSTEM**

Pursuant to the Commission's Notice of Proposed Rule Making ("NPRM"), the City of Manitowoc, Wisconsin ("City") respectfully submits its comments regarding rules to implement §623(d) of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act"). The City encourages the Commission to adopt rules implementing the requirement that a cable operator have a uniform rate structure "throughout the geographic area" served by its cable system to mean the entire area served by a cable system rather than particular franchise area within a single cable system. The City respectfully submits that the intent of Congress to promote competition within the cable television industry will best be served by precluding large cable operators from discriminating in pricing in only those particular areas of a cable system which

happen to have competition in an individual franchise area. The City's reasons for urging this position are set forth more fully herein.

I. CITY OF MANITOWOC REPRESENTATIVE.

All communications and correspondence regarding this matter should be directed to the following:

Patrick L. Willis
City Attorney
817 Franklin Street
P.O. Box 1597
Manitowoc, WI 54221-1597

Phone: (414) 683-4418

II. NATURE OF CITY'S INTEREST IN THIS MATTER.

The City of Manitowoc has a population of 32,000 residents and is located in the State of Wisconsin on the western shore of Lake Michigan. The City is 35 miles southeast of Green Bay, Wisconsin and 75 miles north of Milwaukee, Wisconsin. The City has a municipally-owned electric utility (Manitowoc Public Utilities) which provides electric service to all residents in the City. Cable television service is currently provided to residents of the City by a large multiple system operator ("MSO"). The cable television system which serves our residents has a headend located in the City of Manitowoc, and a tower located outside of the City limits which receives certain broadcast signals from the City of

Milwaukee. (A smaller tower located at the headend receives over the area broadcast signals from Green Bay.)

The Manitowoc cable system also serves surrounding municipalities under separate franchise agreements.

Since federal deregulation of cable rates took effect in December of 1986, basic cable television rates in the City of Manitowoc have increased 119%. (The base rate increased from \$10.03 per month to \$21.95 per month.)

During recent years Manitowoc Public Utilities has studied how a municipally-owned cable system in the City could be used to more efficiently provide electric service as well as more economically provide cable television service. This investigation has included a study of municipal cable operations in Paragould, Arkansas and Glasgow, Kentucky where other municipal utilities operate a cable television system in competition with a private operator. We have reached the tentative conclusion that if the City enters the cable television business on an equal footing with our present operator, the City can compete with that operator and significantly reduce the cable television charges to our residents.

III. CITY OF MANITOWOC COMMENTS

§623(d) of the Cable Television Consumer Protection and Competition Act of 1992 requires that "a cable operator shall have a rate structure, for the provision of cable service, that is uniform throughout the geographical area in which cable service is

uniform throughout the geographical area in which cable service is provided over its cable system." The NPRM requests comments on the meaning of the term "geographic area" as used above. The NPRM points out that one possible reading of the statute is to limit the term "geographic area" to mean a franchise area. In fact, there is a reference to such an interpretation in the Senate Report on this section. Senate Committee on Commerce, Science and Transportation, S. Rep. No. 102-92, 102 Cong., 1st Sess. at 76 (1991) ("Senate Report"). The NPRM also notes, however, that had Congress intended this provision to be limited to a franchise area rather than over the entire area of a cable system, it could have easily done so in much clearer language.

Foremost among the goals which Congress sought to achieve by adopting the Cable Television Consumer Protection and Competition Act of 1992 was the promotion of competition within the cable television industry. See, e.g., Senate Report at p. 18. Congress wanted to promote such competition with a minimum of oversight. Id. (This desire to keep oversight at a minimum is demonstrated by the rate regulation provisions which were made part of the Act. While the Act purports to subject basic cable rates to regulation, it allows cable operators to easily retier their rate structure to avoid this regulation. For example, the City's cable operator in 1992 created a new basic service which does not include ESPN, CNN, TNT, Sports Channel America and CNN Headline News. This "sub-basic" service is now priced at \$20.95. The so-called "basic plus package" which includes the above listed services sells for only

\$1.00 a month more, at \$21.95. Since few subscribers will select the lower cost service which saves them only a dollar but removes many popular services, the rate regulation provisions of the Cable Act are likely to have virtually no effect on cable pricing in the City of Manitowoc.)

If the City of Manitowoc does elect to compete with our cable operator, we are fearful that a narrow reading of the uniform rate requirement, which would limit uniform rates to a franchise area only, will enable our operator to engage in predatory pricing only in the City of Manitowoc, thus undercutting the City's efforts to fairly compete. We believe that Congress intended to prohibit a cable operator from using some parts of its cable system to subsidize predatory pricing in other parts of that cable system where competition was present. Indeed, while the Senate Report contemplated that the situation would arise in a franchise area rather than a greater area served by a cable television system, the Senate Committee was definitely concerned and wanted to prohibit a cable operator from dropping rates in one area to "undercut a competitor temporarily." Senate Report at p. 76.

As the NPRM suggests, if Congress had intended §623(d) to be limited to a particular franchise area served by a cable system, rather than an entire cable system, Congress could have easily used language to effectuate that intent. The term "cable system" is defined in §602(7) as an integrated set of physical equipment rather than the intangible legal franchise right to operate a system in a particular area.

If the statutory language is interpreted in regulations to mean a franchise area only, §623(d) is likely to have very limited applicability. Where competition does exist, it generally is going to cover an entire franchise area. In our case, the City is certainly not going to construct a cable system which does not provide service to all City residents. If we were to entertain a proposal from a private cable competitor we would not allow that competitor to serve only a portion of the City, since that could provide the new competitor with an unfair advantage over the existing competitor.

IV. CONCLUSION.

The City suggests that the fact Congress took the time to include §623(d) as a part of the Act, and did not limit the uniformity requirement in the statute to a particular franchise area, makes it apparent Congress wanted the language to have more meaningful applicability in order to promote competition. The promotion of competition is the basic theme underlying the Cable Act. We urge the Federal Communications Commission to interpret §623(d) with this purpose in mind. The statute should be given a literal interpretation as meaning the entire area served by a cable system rather than simply a franchise area within a cable system.

Respectfully submitted this 25th day of January, 1993.

Patrick L. Willis

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